

**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE EXAMINING GROUP 2619**

Attorney Docket No. 9400-66 (030423)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: James William Rembert

Confirmation No.: 6632

Application No.: 10/747,735

Group Art Unit: 2619

Filed: December 29, 2003

Examiner: Saba Tsegaye

For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR  
ENCAPSULATING PACKET TRAFFIC ASSOCIATED WITH MULTIPLE  
LAYER TWO TECHNOLOGIES

April 9, 2008

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL  
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed January 9, 2008 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Applicants appreciate the withdrawal of the Section 101 rejection. Applicants respectfully submit, however, that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein and in Applicants' previously filed

Amendment dated October 9, 2007. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1, 8, and 15 and dependent Claims 4, 11, and 18

**Independent Claims 1, 8, and 15 are Patentable**

Independent Claims 1 and 8 stand rejected under 35 U.S.C. §102(e) as being anticipated by U. S. Patent Publication No. 2004/0190548 to Harel et al. (hereinafter "Harel"). (Final Action, page 2). Independent Claim 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Harel. (Final Action, page 4). Independent Claim 1 is directed to a method of operating a multiprotocol label switching (MPLS) network, and recites:

establishing a label switched path (LSP) that connects a first provider edge (PE) label switched router (LSR) a second PE LSR, and a customer edge (CE) LSR;

encapsulating packet traffic that is associated with a plurality of different layer two technologies with an MPLS label; and

securely routing the encapsulated packet traffic from the first PE LSR through the second PE LSR to the CE LSR using the LSP.

Independent Claims 8 and 15 include similar recitations. According to the recitations of Claim 1, an LSP is established and packet traffic that is associated with a plurality of different layer two technologies is encapsulated with an MPLS label. The encapsulated packet traffic associated with the multiple layer two technologies is routed using the LSP. Thus, embodiments of the present invention may aggregate traffic associated with multiple layer two technologies onto a single LSP.

In sharp contrast, Harel describes accepting input data from a packet source 32 and a time division multiplexed (TDM) source 30. An integrated transport device (ITD) encapsulates the data from both the packet source 32 and the TDM source 30 into packets for transmission over a network 28. (Harel, paragraphs 84 and 87 - 93; FIGS. 1 and 2). In sharp

contrast to the recitations of independent Claim 1, however, Harel does not disclose or suggest aggregating the packets associated with the packet source 32 and the packets associated with the TDM source 30 onto a common LSP. Applicants acknowledge that Harel suggests that MPLS may be used to carry packets through the network 28, but Harel states that the packets are transmitted using MPLS tunnels. (Harel, paragraph 84). That is, Harel envisions multiple MPLS tunnels being used to carry the packets associated with the packet source 32 and the TDM source 30. Applicants cannot find any disclosure or suggestion in Harel that a single LSP be used to carry packet traffic associated with the packet source 32 and packet traffic associated with the TDM source 30.

In response to this analysis the Final Action cites paragraph 34 from the "Summary of the Invention" section of Harel as teaching the use of MPLS tunnels for carrying packets through the network 28. (Final Action, page 5). The Final Action further alleges that the purpose of MPLS is to ensure that all packets in a particular flow take the same route over a network backbone. (Final Action, page 5). Applicants submit that the Final Action still fails to provide any support for the assertion that Harel teaches using a single LSP to carry packet traffic associated with different layer two technologies. In fact, Applicants submit that Harel teaches against using the same LSP to carry packet traffic associated with different layer two technologies. In paragraph 84, Harel states that the MPLS transport through the network may be performed using the scheme described in Martini et al. as described in the "Background of the Invention" section. The Martini et al. scheme is described in paragraph 17 of Harel and involves the use of a "pseudo wire" (PW) label to identify the particular layer two service to be used for processing a packet. Importantly, paragraph 17 states: "...The PW type specifies **the type of layer 2 service to be carried between the tunnel endpoints**,...The PW ID is used by the layer 2 service endpoints to **associate the locally-configured service with the tunnel**." Thus, the Martini scheme, which is used in Harel's system, associates a particular layer two service with a tunnel through a pseudo wire label. This means that Harel limits a LSP to carrying traffic associated with a single layer two technology, not multiple layer two technologies as recited in the pending independent claims.

For at least the foregoing reasons, Applicants respectfully requests that the present application be reviewed and that the rejection of independent Claims 1, 8, and 15 be reversed

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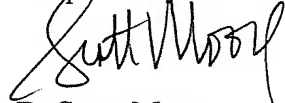
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by the appeal conference prior to the filing of an appeal brief.

**Various Dependent Claims are Separately Patentable**

Dependent Claims 4 and 11 stand rejected under 35 U.S.C. §102(e) as being anticipated by Harel. (Final Action, page 3). Dependent Claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Harel. (Final Action, page 4). Applicants submit that dependent Claims 4, 11, and 18 are patentable at least per the patentability of independent Claims 1, 8, and 15, respectively. Applicants further submit that dependent Claims 4, 11, and 18 are separately patentable because Harel does not disclose or suggest statically provisioning an MPLS label between a PE LSR and a CE LSR and stitching the statically provisioned MPLS label to a signaled LSP that connects first and second PE LSRs. The Final Action cites paragraph 17 of Harel as disclosing the recitations of Claims 4, 11, and 18 (Office Action, page 3), but this paragraph describes the use of a pseudo wire (PW) label and does not provide any disclosure with respect to stitching a statically provisioned MPLS label to a signaled LSP. Applicants submit, therefore, that dependent Claims 4, 11, and 18 are separately patentable over Harel for at least these additional reasons and respectfully request the reversal of the rejection of Claims 4, 11, and 18 by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



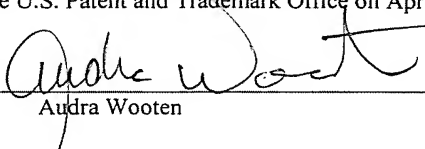
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**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on April 9, 2008.

Signature: \_\_\_\_\_

  
Audra Wooten